In the result, Keruntum's application, except in so far as the order striking out para 9(d) of PPES' statement of claim, is dismissed with costs to PPES.

Application dismissed.

Solicitors: *Reddi & Co Advocates; Szetu & Co Advocates.*

Reported by *Mathavan Devadas*

Rebecca Mathew & Ors v Syarikat Kerjasama Serbaguna Gema Wong Siong Bhd & Anor

HIGH COURT (ALOR SETAR) — CIVIL SUIT NO 643 OF 1985
KC VOHRAH J
26 OCTOBER 1989

Damages (Personal Injury or Death) — Dependency claim — Liability admitted — Quantum of damages for loss support — Civil Law Act 1956, s 7

On 3 October 1982, Alex Mathew ('the deceased') died as a result of a collision between his car and a motor lorry of the first defendant which was driven by the second defendant. His wife and two children brought an action to recover damages under s 7 of the Civil Law Act 1956 as dependants against the defendants. At the hearing, the claim of the second plaintiff ('the son') was dropped as he has since died. Liability was admitted by the defendants. The issue before the court was the calculation of the quantum on damages by reference to the loss suffered by the first and the third plaintiffs as a result of the death of the deceased.

Held:
The approach to be taken in this case was to find the net income of the deceased and deduct from that a percentage representing the deceased's personal living expenses; the remainder is the value of the dependency for the plaintiffs.

Cases referred to
1 *Chan Heng Wah & Anor* v *Peh Thiam Choh & Anor* [1986] 2 MLJ 175; [1988] 1 MLJ 74 (folld)
2 *Lita Maddox* v *Calito C Guinto & Anor* [1987] 2 MLJ 757 (refd)

Legislation referred to
Civil Law Act 1956 s 7

Alex Anthony for the plaintiffs.
Bala Mahesan for the defendants.

Cur Adv Vult

KC Vohrah J: Alex Mathew died as a result of a collision on 3 October 1982 between his car and a motor lorry of the first defendant which was driven by the second defendant. His wife and two children brought an action to recover damages under s 7 of the Civil Law Act 1956 as dependants against the defendants, but at the hearing, the claim of the second plaintiff (the son) was dropped as he has since died. What remains is the case of the third plaintiff (hereinafter the 'wife') who remarried on 1 February 1988 and that of the first plaintiff (hereinafter the 'daughter') who is now 10 years old and living with her mother in India.

Liability being admitted by the defendants, it is now necessary to calculate the quantum of damages by reference to the loss suffered by these two plaintiffs as a result of the death of Alex Mathew. In regard to special damages, this has been agreed at $2,140.

As regards the dependency claim, the wife's claim, it is agreed, is from the date of the death of Alex Mathew (3 October 1982) to the date she remarried (1 February 1988), a period of 63 months. Part of the daughter's claim will be over the same period and both counsel agree that the award for this period would be 75% in favour of the wife and 25% the daughter.

Both counsel have also agreed that the additional period in respect of the daughter's dependency for the pre-trial period would be the intervening period between the date of her mother's remarriage and the date of trial, this being 21 months. As for the post-trial period, both counsel agree that it should be eight years.

I now come to the lost support to the two dependants in monetary terms. Counsel for the plaintiffs advocates the totalling up of all the moneys spent by the deceased from his earnings on the plaintiffs in order to calculate the loss of the value of the dependency. This would involve the tedious process of adding up all sorts of sundry expenditure which in most circumstances would be based on guess work. And in the present case, the evidence is too scanty to be of help to the court for it to arrive at a sensible sum using the approach that is advocated.

With respect, in the circumstances of this case, I think the more sensible approach is the one advanced by counsel for the defendants; find the net income of the deceased and deduct from that a percentage representing the deceased's personal living expenses; the remainder is the value of the dependency for the plaintiffs. He cites the Singapore case of *Chan Heng Wah* v *Peh Thiam Choh & Anor*[1] which went on appeal to the Court of Appeal as an example of this approach. The Singapore case is concerned with an estate claim and there is an exhaustive examination of relevant authorities in both the High Court and the Court of Appeal judgments as regards the approach to be taken in deducting living expenses of a deceased; the clear conclusion is that the approach of deducting a percentage leaving the remainder as surplus income for the dependants is a modern trend for both estate and dependency claims. To my mind, such a practical and sensible approach can safely be adopted in this case, there being no contrary local structures and no circumstances in this case against such an approach.

Available documents and oral evidence show earnings and major deductions in respect of Alex Mathew for

the years 1981 and 1982. The evidence was not clear as to how much the deceased would have earned at the time of the trial and in the circumstances I would have to rely merely on the 1981 and 1982 figures.

His gross earnings for 1981 as shown in the employer's return of income of the deceased to the Tax Department (the 1981 EA Form) came to $40,914.04. From this must be deducted the income tax he had to pay on his earnings and it was agreed that he probably paid $7,790 as tax. From the remainder of $33,124.04 must then be deducted his Employees' Provident Fund contribution of $3,871 (this appears in the 1981 EA Form) leaving a net income of $29,253.04 for the year 1981. This works out to $2,437.75 per month for 1981.

In regard to 1982, the income from 1 January to 3 October 1982 (date of death of deceased), the employer's return of the deceased's income to the Tax Department (the 1982 EA Form) for the year 1982 showed a gross income of $39,391.75. Probable income tax that was paid has been agreed at $4,307 and the Employees' Provident Fund contribution that was made by the deceased (shown in the 1982 EA Form) was $3,871. Thus, the net income of the deceased for nine months in 1982 was $31,213.75. This works out to $3,468.19 per month.

Averaging the income of the two years, there being nothing available for the court on which to determine the amount during the trial period, the nett income is $2,953 per month to the nearest dollar. There must be reduced from this amount of $2,953 the personal living expenses of the deceased on the basis of what I had discussed earlier. Alex Mathew was a planter. Estate life is perhaps relatively quiet when compared to life in the urban area and personal expenses for a family man would probably not have been much. But he was a deputy manager of a big estate when he died and it is probable he had a fairly active social life where he would have had to incur personal expenses not required of other lower-ranking planters. It seems to me that, in the circumstances, a deduction of 25% from the net amount where the family comprised the husband, wife and two children seems appropriate and just. This would probably have covered his personal expenses (see the examples of personal expenditure mentioned in the Singapore case and in the cases cited therein and also mentioned in the Brunei case of *Lita Maddox* v *Calito C Guinto & Anor*[3]).

There is no deduction for the cost of shared benefits such as housing and food, enjoyed as part of the family group. If this is an estate claim, I would have to make a deduction of a pro-rata share of the cost of shared benefits but this is a dependency claim and no deduction on that account should be made. Twenty five per cent of the net amount is $738 (to the nearest dollar). Thus, the surplus amount per month for the dependants is $(2,953 — 738) which is $2,215.

Damages for wife and daughter from date of death of deceased to date of the remarriage of wife (63 months)

Thus, the general damages for the wife and daughter for 63 months is $2,215 x 63, ie $139,545.00. As stated earlier it was agreed by the parties that the wife would be entitled to 75% of that, ie $104,659 (to the nearest dollar). The daughter is entitled to 25% of that, ie $34,886 (to the nearest dollar).

Damages for daughter between date of remarriage of wife to date of trial (21 months)

My view is the agreed ratio of 75:25 as between wife and daughter in regard to the award for the period of 63 month should equally apply to the 21-month period intervening between the date of remarriage of the wife to the date of trial and the dependency amount per month for the daughter in that event would be 25% of the surplus amount of $2,215. This works out to $554 per month (to the nearest dollar). The damages for 21 months will be $11,634.

Damages for daughter for post-trial period at eight years

I can see nothing in the evidence that requires any change to be made to the dependency amount of $554 (rounded to $550) per month in regard to the daughter for the agreed post-trial period of eight years. Using the annuity tables following the practice in respect of causes of action arising before 1 October 1984, the damages come to $42,657 (to nearest dollar).

To summarize the damages awarded:

(1)	Special damages as agreed Agreed interest at 4% from date of accident to date of trial	—	$2,140
(2)	(a) Pre-trial general damages for wife	—	$104,659
	(b) Pre-trial general damages for daughter No question of interest arises	—	$46,520
(3)	Post-trial damages for daughter	—	$42,657

Whatever is awarded to the daughter (first plaintiff) is to held in trust by the public trustee who shall release a sum of $500 every three months to the third plaintiff for the use of the first plaintiff until she reaches the age of majority, the first release to be made three months from today, with liberty to apply. Costs to the plaintiffs.

Order accordingly.

Solicitors: *Alex R Anthony & Associates*; *Bala Mahesan.*

Reported by *Kevin Mathews*